

ORIGINAL

OPEN MEETING AGENDA ITEM

BEFORE THE ARIZONA CORPORATION COM



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COMMISSIONERS

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AZ CORP COMMISSION
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IN THE MATTER OF THE FORMAL
COMPLAINT OF MARSHALL
MAGRUDER FILED WITH THE ARIZONA
CORPORATION COMMISSION ON
DECEMBER 5, 2008.

Docket No. E-04204A-08-0589

Notice and Filing of Exceptions to the
Recommended Opinion and Order

by Marshall Magruder

21 April 2011

The Commission Executive Director's letter of 12 April 2011 provided the Recommended Opinion and Order (ROO) to a UNS Electric "Motion to Dismiss the Complaint and to Stay the Administrative Schedule" in this matter and instructions on filing Exceptions, herein filed by Marshall Magruder. This filing recommends five exceptions to the ROO:

- Magruder Exception 1 - Deny the ROO and Conduct an Evidentiary Hearing;
- Magruder Exception 2 - Order UNS Electric to Fund Student Loans as per Order No. 61793;
- Magruder Exception 3 - Direct the Commission Staff to Report the Status of the 32 Distribution Reliability Projects in Santa Cruz County Required by Decision No. 62011;
- Magruder Exception 4 - Require UNS Electric to Establish a Program so Customers on Life Support Equipment Can Apply to be Notified during an Electrical Outage.

I certify this filing has been mailed to all parties, as shown on the Service List, this date.

Respectfully submitted on this 21st day of April 2011

MARSHALL MAGRUDER

By

Marshall Magruder
PO Box 1267
Tubac, Arizona 85646-1267
(520) 398-8587
marshall@magruder.org

Arizona Corporation Commission

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Service List

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Docket Control (13 copies)

Arizona Corporation Commission

1200 West Washington Street

Phoenix, Arizona 85007-2927

All Commissioners Advisors (5 copies)

Jane Rodda, Administrative Law Judge (1 copy)

Steve Olea, Director Utilities Division (1 copy)

Janice Alward, Chief Counsel (1 copy)

Ernest G. Johnson, Executive Director (1 copy)

Additional Distribution (1 copy each) by mail:

Michael W. Patten, Attorney for the Applicant

Roshka, DeWulf & Patten, PLC

One Arizona Center

400 East Van Buren Street, Suite 800

Phoenix, Arizona 85004-2262

Phillip Dion

UniSource Energy Services

One South Church Avenue, Ste 200

Tucson, Arizona 85702

Daniel Pozefsky, Chief Counsel

Residential Utility Consumer Office (RUCO)

1110 West Washington Street, Ste 220

Phoenix, Arizona 85007-2958

Interested Parties are filed this date by email:

Santa Cruz County Supervisors:

Manny Ruiz, Chairman

Rudy Molera, Vice-Chairman

John Maynard, Supervisor

Santa Cruz County Complex

2150 North Congress Drive

Nogales, Arizona 85621-1090

City of Nogales

Arturo Garino, Mayor

Shane Dilli, City Manager

Jose Machado, Temporary City Attorney

Michael Massee, Deputy City Attorney

TBD, Director of Utilities

Nogales City Hall

777 North Grand Avenue

Nogales, Arizona 85621-2262

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3 **EXCEPTIONS TO THE**
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5 **RECOMMENDED OPINION AND ORDER**
6

7 **BY**
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10 **MARSHALL MAGRUDER**
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19 **21 April 2011**
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25 **IN THE MATTER OF**
26 **THE**
27
28 **THE FORMAL COMPLAINT OF**
29 **MARSHALL MAGRUDER**
30 **FILED WITH THE ARIZONA CORPORATION COMMISSION**
31 **ON DECEMBER 5, 2008**
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33
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Summary of the Magruder Exceptions

1. The ROO should be returned to the Hearing Division for an Evidentiary Hearing in Exception 1.

The ROO should be rejected because the Complainant has not had an opportunity to cross-examine the UNSE's witnesses or evidence under oath. This ROO is from a Procedural Hearing for The UNSE Motions to Dismiss the Complaint and Stay the Procedural Schedule and not to a hearing based on testimony under oath by witnesses. UNSE has never produced any witnesses but only legalistic avoidance and "corporate amnesia" to directly answer the three complaints for well over two years. The Formal Complaint process requires a "hearing" where I can exercise these rights according to the Arizona Revised Statutes (A.R.S.) §40-246 and §40-247 and the Arizona Administrative Code (A.A.C.) §R14-3-109, *et seq.*

The Magruder Direct Testimony of 22 March 2010, to which UNSE has not responded, has not been heard or has the Complainant defended under oath. The Commission Staff has failed to respond to the Administrative Law Judge's (ALJ) Procedural Order of 16 April 2010 requesting "interpretation of Commission Decisions", a request supported by this party in several filings.

The "hearing" for the Motion to Dismiss was not a hearing to hear my complaints but was when the Complainant hearing rebutted The UNSE Motions. Cross-examination or exhibits was not allowed at this hearing. Exhibits were offered but denied as this procedural conference was not the right time and place.

UNSE has not responded to the Magruder Direct Testimony. Only procedural hearings have been held. A Complainant has a right to present Testimony and cross-examine witnesses from the Company on each complaint. To clear the air, a different hearing officer is requested to rewind the hearing to before The UNSE Motions and rejoin the procedural schedule.

It is respectfully requested that UNSE submit a Response Testimony to the Magruder Testimony. This ROO must be withdrawn because much is based on unsworn information and not on testimony under oath. Retaining this ROO as a document for UNSE to reference will prejudice my case.

2. The Company has not complied with Decision No. 61793 to fund student loans in Exception 2.

The Commission ordered the Company (meaning UNSE and predecessor Citizens) to "fund annually" student loans. It has never complied with Commission Decision No. 61793. The Company has filed no documentary evidence as to why it should not "fund annually," other than an objectable page in a Citizens-UNSE memo. UNSE has faulty excuses and untrue claims. The Company has not furnished any valid evidence that it should not comply with the Decision. This ROO is erroneous. The Commission did approve the Citizens-Nogales Revised Settlement Agreement. The succession clause in the Commission Order did not change the funding requirement. An original Settlement Agreement was rejected by this Commission because of Commissioners concern that an ownership change may result in continuing actions not to be passed on to a new owner. The Commission has jurisdiction over the Revised Settlement Agreement.

1
2 **3. The Company Must Show Detailed Status for 32 Reliability Projects in Exception 3.**

3 The Company established 32 projects to replace known defective utility poles and underground
4 cables. This was in a Staff-Company Settlement Agreement and approved by more than one Commission
5 Decision. No detailed evidence, required by Commission Decision No. 70360, has been presented that each
6 project was ever completed. The ROO is erroneous in that several projects, described in detail in Magruder
7 Testimony and exhibits, are not complete. One project for the Complainant's 22-parcel subdivision was
8 never started. In 2005, an underground cable to his terminal box failed. A few days later the actual failed
9 cable was used as evidence in the reliability hearings to which the Complainant was a party.
10

11 **4. The Company did NOT implement a program to notify anyone on life support during an electrical**
12 **outage in Exception 4.**

13 The proposed approach is extremely limited to only those who have applied for low-income rates,
14 and of that subgroup of customers, only those who have applied for a special program called CARES-M.
15 The party proposed a way to have the County 911-Call Center to make these notifications. Its manager, the
16 County Sheriff, has agreed to accomplish this but has requested that a Memo of Understanding be signed
17 between the Company and the Sheriff's Department so that established the details of who does what and
18 when with a liability clause as notifications will be situational dependent and other events may prevent
19 notifications. This program cannot guarantee notifications. The Complainant planned to call the County
20 Sheriff or a deputy as a witness during an evidentiary hearing on this Complaint.
21

22 **5. The Motion to Dismiss the Company's attorney was answered in the ROO.** However, the real issue
23 is a revolving door between Commission and utility attorneys. The attorney in this Motion, as a
24 Commission's attorney, argued against two of these complaints in 2005 representing the Commission and
25 now represents the Company. He clearly has been on both sides of these two issues. In order to reduce
26 such conflicts, it is recommendation the Commission revise its "conflict of interest" rules so that

27 (1) When any attorney, who represented either a company or the Commission in prior hearings related to
28 matter before the Commission, shall be excused whenever representing the a party on the other side.

29 (2) For an attorney who has served or is serving on the Commission's staff:

30 (a) When an attorney has served on the Commission, that attorney shall not represent any company who
31 appeared in any cases assigned during service on the Commission, for a minimum of three years and

32 (b) When an attorney has represented a company before the Commission, that attorney shall not be
33 assigned to any cases involving that company for at least the first three years of service with the
34 Commission.
35

Magruder Exception 1

Deny the ROO and

Require the Hearing Division to Conduct an Evidentiary Hearing

Background.

This Complaint was filed in December 2008. After a year of reviewing compliance with Commission Order No 70360 that required continuation of each of the three issues, a Procedural Order was issued for this Complainant to file Testimony on 22 March 2010¹ and the Company to submit Reply Testimony three weeks later. Instead of replying to this Testimony, the Company filed a Motion to Dismiss with Prejudice and a Motion to Stay the Procedural Schedule on 12 April 2009 (*sic.* 2010) including delaying both the filing date for the UNS Electric's Responsive Testimony (originally due 19 April 2010) and the evidentiary hearing set to commence on 24 May 2010.²

On 24 April 2010, the Administrative Law Judge (ALJ) filed a Procedural Order to delay submission of UNSE Responsive Testimony and hear The UNSE Motions. Mr. Magruder was ordered to respond to The UNSE Motions³ and that UNSE Reply prior to a Procedural Conference to hear Oral Arguments to The UNSE Motions. The ALJ requested, because "the Motion may involve interpretation of Commission Decisions" and to "assist in the resolution of the Motion. **Staff should review the matter to determine if its participation in the matter would benefit the Commission's resolution of the matter, and may file an appropriate pleadings.**"⁴ [Bold emphasis in original] This party agreed with the ALJ and filed a "request for Staff Assistance to the Administrative Law Judge" in support.⁵ The Staff did not respond.

The Procedural Conference concerning The UNSE Motions was held on 6 October 2010. This was not an Evidentiary Hearing on the Complaint. The prefiled Magruder Reply and Oral Arguments refuted each and every charge in The UNSE Motions. The Transcript provides the weak UNSE oral arguments. They were completely refuted in the Magruder Reply and the Oral Arguments.

¹ Direct Testimony of Marshall Magruder, 22 March 2010 (hereafter Magruder Direct Testimony).

² UNSE Motion to Dismiss with Prejudice and Motion to Delay the Procedural Schedule, 19 April 2011 (hereafter The UNSE Motions), at 9:10-13.

³ Marshall Magruder Reply to UNS Electric's Motions to Dismiss with Prejudice and Stay the Procedural Schedule, 7 September 2010 (hereafter Magruder Reply).

⁴ Commission Procedural Order, hereafter Procedural Order to hear the Motions, 22 April 2010, at 2:6-9.

⁵ Marshall Magruder Request for Staff Assistance to the Administrative Law Judge and Action to Resolve the Marshall Magruder Formal Complaint, 6 February 2011. This request asked three questions to be answered by the Commission Staff:

(1) "Has UNSE complied with Commission Order No. 61793, specifically ¶13(e)?"

(2) "Has UNS Electric provided records that show completion of each project to replace a total of 3,080 known defective utility poles and 161,388 feet of improperly laid and unreliable underground cable in the 20 utility pole and 12 underground cable projects specified in the Commission Staff-Citizens Settlement Agreement of 9 August 1999 in the Citizens "Plan of Action" Attachment IV, "Citizens Utility Company Pole and Cable Replacements Santa Cruz Electric District, 1999-2003"1 ordered in Commission Decision Nos. 62011 and 66615?"

(3) "Has UNSE implemented a permanent process that allows any Santa Cruz County customer on life-support equipment to be able to request notification during an outage?" at 2:12-21. [Underlined for emphasis]

1 Many of the Company's filed and oral comments on these issues, including The UNSE Motions, contain
2 many false, not true, or deliberately misleading statements. They have been repeated so many times since
3 2005, it is hard to read the Record of these proceedings to determine the truth.⁶ The ALJ also repeated the
4 Company's false, erroneous and misleading statements in the ROO as if they are a fact. It appears the ALJ
5 did not review all 205 pages of the Magruder Direct Testimony and its documentary exhibits in depth
6 because of errors in the resultant ROO. Annex A herein, is a listing of the Magruder Exhibits to date.

7 The Magruder Direct Testimony is a complete file of the key documentary records. They have not been
8 presented in an Evidentiary Hearing, under oath or cross-examined. No such documents have been
9 presented by UNSE in defense of its arguments in this case. The UNSE Motions and others appear to have
10 been submitted to avoid having to testify. The Complainant feels UNSE cannot develop adequate evidence.

11 The A.A.C. rules for a Formal Complaint use an Evidentiary Hearing so that both sides can present
12 evidence, call witnesses, have sworn testimony, and most importantly, to cross-examine the other party,
13 under oath, so that the truth can be presented in open court to the Judge and for the record.⁷ This party
14 has been unable to present his case, due to the numerous avoidance techniques and The UNSE Motions.

15 Conclusion:

16 This Exception respectfully requests that the proposed ROO be denied so that an Evidentiary Hearing
17 be held so that these issues can be properly adjudicated with sworn testimony by witnesses in the record
18 (by both parties) so that resolution of these three issues will be proper and fair to the ratepayers,
19 customers and citizens in Santa Cruz County and to UNSE.
20
21

22 Recommendations:

- 23 a. That the ROO be denied and returned to the Hearing Division.
- 24 b. That the Commission Staff be ordered to investigate and report on the three questions in the
25 Magruder Request to Assist the ALJ. [See footnote 5 above]
- 26 c. That the Hearing Division be ordered to continue the Procedural Schedule, with the Company to
27 present its Response Testimony and about three weeks later to conduct an Evidentiary Hearing.
- 28 d. That the Hearing Division appoint a new hearing officer due in order to resolve continuous errors
29 and allow evidence-backed sworn statement to be used by a fresh ALJ.
30
31

32 ⁶ This also occurred with the ALJ in the prior UNSE rate case and its resultant Commission Order No. 70360. See Magruder Direct
33 Testimony, Exhibit MM-2 for some suggested corrections of more significant errors for another ALJ to consider.

34 ⁷ A.A.C. §R14-3-109(G), for the rules for presenting evidence and examination of witnesses. This party has not had an
35 opportunity to call and witnesses to support the Magruder Direct Testimony or to cross examine witnesses from the company.
The company has not presented any evidence to support its position on the complaints. During the October 2010 Procedural
Conference, this party was denied permission to present any Exhibits. Documentary evidence has been submitted in the
Magruder Direct Testimony and its Exhibits. UNSE has not submitted any Testimony or Exhibits in this matter.

Magruder Exception 2

ORDER UNS Electric to Fund Student Loans as per Order No. 61793

Background.

Due to extensive electrical outages in Santa Cruz County in 1998 and 1999, the City of Nogales filed a Formal Complaint against Citizens.⁸ After extensive investigation by the Commission Staff, RUCO and Citizens, the City of Nogales entered into a Settlement Agreement to resolve unreliable electrical service. This agreement has a series of action intended to improve both reliability and relationships between the Company and its customers. The Commission, concerns about continuing actions after Citizens was sold, did not approve the initial agreement. A "Revised" Settlement Agreement that removed these concerns was approved by the Commission and implemented in Decision and Order No. 61793 of 29 June 1999.⁹ All parties, the Commissioners, Staff, Company and the City of Nogales who also represented the County were satisfied. This settled that Complaint. There are several Articles in this agreement.¹⁰ Most Articles in the Nogales-Citizens Revised Settlement Agreement were implemented without issue.

Article Nine, the Education Opportunities, is for Student Loans with several conditions including

(a) The Company to fund an annual award of \$12,000 a year, for four years at \$3,000 per year;

(b) Award a four-year, \$3000 interest-free loan to a high school student in Santa Cruz County;

(c) The student to attend an Arizona university;

(d) The loan would be "forgiven" if the Awardee returned to work¹¹ in the Santa Cruz County or the City of Nogales, otherwise the loan would have to be repaid to the Company, and that

(e) The Company to work with others to expand this local scholarship-loan as a long-term program.

None of these conditions have ever been fully met. Citizens awarded seven "scholarships" (not student loans) between 1998 and 2003, until the UniSource Energy purchase.¹² Mr. Pignatelli, UNS Electric CEO, testified in 2008 in the prior rate case, that UNSE has complied with this Order and has awarded seven scholarships. As shown in Table 1, this is not true.

⁸ "Citizens", also known as Citizens Communications Company; Santa Cruz Electricity Division, provides electricity in Santa Cruz County. Citizens' in 1999 decided sell all its utilities other than communications and was "for sale" until October 2002 when UniService Energy, Inc., completed an agreement to purchase "Citizens" Arizona assets. This party and many others questioned the stability and viability of an orphan company, as it was for sale for over 3 years. In early 2003, the City of Nogales started "condemnation" proceedings to purchase the Santa Cruz assets; however, the September 2003 election results did not approve.

⁹ The Magruder Direct Testimony contains the Commission Decision and Order No. 61793, Exhibit MM-1, Exhibit M-A.

¹⁰ One Article established the Citizens Advisory Council (CAC) to receive public inputs and discuss alternatives to issues with the community and to keep the public informed of the PPFAC, DSM and REST adjusters. A Plan of Action (POA) was required to the Commission to specific changes to improve reliability. The POA was implemented in an ACC Staff-Citizens Settlement Agreement in Decision No. 62011 and others. The POA for replacement defective utility poles and underground cables is an ACC Staff-Citizens Settlement Agreement, not the Nogales-Citizens Settlement Agreement, as erroneously stated in Decision 70360.

¹¹ I have used two years as reasonable. The goal for these awards is an improved workforce for the Twenty-First Century. The loan program is designed to reduce the "brain drain" of high school seniors with at least one more local college graduate a year.

¹² For the five years through 2003, Citizens awarded \$15,000 of the \$60,000, or 25% of that required by Order No. 61793. UNS Electric awarded nothing for 2003, 2004, 2005, 2006 and 2007 and in 2008, a \$1000 scholarship. As of 31 December 2010, UNS Electric has awarded \$13,000 of the \$96,000. UNSE is estimated to be in arrears \$83,000, or 15.6% of that in the Order.

Table 1 – Status of the Scholarship/Loan Program though end of 2010.¹³

Cal-endar Year	Number of Awards	Attend Arizona college	Total Awarded this Year	Total To Be Awarded this Year	Total Awarded To Date	Total To be Awarded to Date	Total Deficient
Awards by Citizens							
1999	1	No	\$1,250 ⁽¹⁾	\$12,000	\$1,250	\$12,000	\$10,750
2000	2	Yes, Yes	\$4,250 ⁽¹⁾	\$12,000	\$5,500	\$24,000	\$18,500
2001	1	No	\$3,000	\$12,000	\$8,500	\$36,000	\$27,500
2002	1	No	\$3,000	\$12,000	\$11,500	\$48,000	\$36,500
2003	2	Yes, No	\$3,500	\$12,000	\$15,000	\$60,000	\$45,000
Awards after the Acquisition by UNS Electric (2)							
[UniSource Energy, Inc. purchased Citizens on 29 October 2002, effective 11 August 2003]							
2004	0	0	0	\$12,000	\$15,000	\$72,000	\$57,000
2005	0	0	0	\$12,000	\$15,000	\$84,000	\$69,000
2006	0	0	0	\$12,000	\$15,000	\$96,000	\$81,000
2007	0	0	0	\$12,000	\$15,000	\$108,000	\$93,000
2008	1	Unknown	\$1,000 ⁽³⁾	\$12,000	\$16,000	\$120,000	\$104,000
2009	4	Unknown	\$8,000 ⁽⁴⁾	\$12,000	\$24,000	\$132,000	\$108,000
2010	2	Unknown	\$4,000 ⁽⁴⁾	\$12,000	\$28,000	\$144,000	\$112,000
ANNUALLY, thereafter				\$12,000			

Notes:

- (1) These awards are annotated "Jose Cañez Memorial/Citizens Energy" in Exhibit M-B that were advertised by Citizens in the *Nogales International* in 1999 as \$5,000 annual scholarships in memory of a Citizens employee named Joes B. Cañez. It appears none of these Cañez Memorial scholarships were for \$5,000 described in Exhibit M-B. This program started prior to the Settlement Agreement.
- (2) UniSource Energy acquired Citizens and created a new electric public service company, UNS Electric, Inc., a subsidiary of UniSource Energy Services (UES), a holding company.
- (3) Awarded by UNS Electric and UNS Gas, the two public service companies that are held by UES.
- (4) Awarded by UniSource Energy Services (UES).

Mr. Magruder remains firm that conditions (a) and (b) are required and claims the Company is significantly in arrears. He is willing to modify past non-financial issues in conditions (c) to (e) above, and expects full compliance in all future awards. He recommends the conditions be used for multiple annual scholarship loans until the deficiency is reduced to zero. There has been no effort by the Company to work with others to expand this program, condition (e), and a "new" agreement specifically prohibits any expansion. In fact, the Company recently signed an Agreement with the City of Nogales and two school district Superintendents to reduce this program from \$12,000 a year to \$9,000 a year; to limit the length of the program to 20 years, and to "let bygones be bygones"¹⁴ with respect to funding the arrears.

The Company claims the Revised Settlement Agreement does not apply. Magruder Direct Testimony at 11-29 and Exhibits MM-1 (Exhibit M-A is Commission Order No. 62793) to MM-4 are evidence that shows Decision No. 61793 does apply to UNSE. The Commission Order No 62173 includes the following:

¹³ Magruder Testimony at 13:7-25, and updated to include 2010 based on the annual *Nogales International* Graduation Annual edition that showed two \$2,000 scholarships were awarded by UES.

¹⁴ This was the term used by the Company's spokesperson Larry Lucero at the Nogales City Council Meeting in November 2009, when the City Council voted to not approve the limited substitute program in Magruder Direct Testimony as Exhibit MM-7.

1 a. In paragraph 13(e) there is an annual requirement to "fund interest-free four year loans for Santa
2 Cruz County high school graduates".

3 b. In paragraph 12, that "A copy of the Revised Settlement Agreement is attached hereto as Exhibit A,
4 and incorporated by reference." Furthermore, the jurisdiction of the Revised Settlement Agreement will
5 remain with the Commission because this is a public service company. The parties agreed to dismiss the
6 City of Nogales Complaint, with prejudice, that is, the City cannot refile as the complaint has been resolved.

7 c. The Revised Settlement Agreement, incorporated by reference, includes

8 (1) Article 9. Education Support states, "Citizens will contribute \$3000 per year, per student,
9 toward this program" for four years, thus funding is \$12,000 every year. Article 9 is in the footnote.¹⁵

10 (2) Article 10, has a "succession clause" to "bind the successors and assign of the parties" of the
11 Agreement. UNS Electric is the assigned successor to Citizens.

12 All other arguments by the Company are contrary to these clear, binding requirements. The Magruder
13 Testimony presents documentation that shows the Company's arguments are not true. For example, the
14 Company has stated that the Purchase Agreement between Citizens and UniSource Energy did not include
15 references to Commission Decisions No 61793 and 62011 and the Revised Settlement Agreement based
16 on a marked up copy of the Assumed Liabilities section with lines through these three documents.¹⁶ The
17 Magruder Direct Testimony states this party has an unmarked copy in a Data Request response in 2005.

18 Further, Magruder Testimony Exhibit MM-2 is a letter from the Nogales Deputy City attorney to
19 Citizens. Exhibit MM-3, Citizens' Response states "UniSource assumed responsibility for the annual
20 scholarship funding under the Revised Settlement Agreement after the closing on August 11, 2003."¹⁷
21
22
23

24
25 ¹⁵ From Commission Order No. 61793, Exhibit A, at 7 states:

26 **"9. Educational Support.**

27 "A skilled, knowledgeable work force will be a key to Santa Cruz County's success in the 21st century. Following the Parties'
28 execution of this Revised Settlement Agreement, the City and Citizens will work together to develop an educational assistance
29 program to assist worthy Santa Cruz County high-school senior attend the Arizona college of their choice. Each year, the
30 program will select one County senior for a four-year interest free loan to assist with tuition, books, and miscellaneous college
31 expenses. If, following graduation, the student returns to Santa Cruz County to live and work, the loan will be forgiven. Citizens
32 will contribute \$3000 per year, per student, toward this program. Other contributions will be solicited from other benefactors
33 to expand this program even further, such as to cover some portion of room and board, graduate school, or vocational
34 programs." [Bold in original]

35 ¹⁶ This "markup" is provided as Exhibit 3 to The UNSE Motions is from a Memorandum of Understanding between UniSource
Energy and Citizens dated 11 August 2003. Magruder Direct Testimony letter from the Deputy City of Nogales Attorney to
Citizens, Exhibit MM-2, and the reply from Citizens, Exhibit MM-3, states this "markup" is not true. It is this party's belief that
this appears to be what "lower level" personnel were agreeing and was never included in the Citizens Acquisition case, that I
was a party with a "clean" unmarked version received from the Company in response to a Data Request.

¹⁷ From Magruder Direct Testimony Exhibit MM-3, at 19:27-32, the following is quoted:

"Under Section 3.2(a) of the Asset Purchase Agreement, UniSource [a parent of UNS Electric] assumed "all liabilities of
[Citizens] arising on or after the Closing Date under the Assigned Agreements." The Revised Settlement Agreement is an
Assigned Agreement and Assumed Liability which UniSource assumed responsibility for the annual scholarship
funding under the Revised Settlement Agreement after the closing on August 11, 2003." [Citizens letter of 31 July
2008, Magruder Direct Testimony, Exhibit MM-3, emphasis added]

1 Some of the Problems with the Proposed ROO and Responses:

2 The proposed ROO does not use the evidentiary documentation or the Exhibits in Annex A. The
3 Magruder Direct Testimony shows, without any doubt, as to the succession, jurisdiction, and validity of the
4 Revised Settlement Agreement in Commission Decision No. 61793 for continuing a Student Loan program.

5 For example:

6 1. The ROO in ¶57 at 12:4-8, quotes UNSE that argues

7 " [I]n the course of dealing between Citizens and the City of Nogales, under which they did not
8 abide by the settlement agreement's provisions, negated the obligation to continue to fund
9 loans under the settlement agreement, and as a result, as a matter of law, UNSE did not assume
10 the obligation to provide the scholarships [sic. loans] discussed in the agreement between the
City of Nogales and Citizens."

11 This statement is false. Citizens did fund a scholarship program from 1999 through 2003 as shown in
12 Table I above and Exhibit MM-1, Exhibit M-B.¹⁸ UNSE failed to fund any student awards in 2004, 2005,
13 2006, 2007 and only \$1000 in 2008, thus, UNSE did not continue the program established by Citizens.¹⁹

14 In the ROO in ¶59 at 12:14-17, it states "Staff believed that legal issues exist that would prevent
15 enforcing the student loan obligation with respect to UNSE.²⁰ According to Staff, the Decision that
16 approved UniSource's acquisition of the Citizens assets did not specify particular obligations that UNSE
17 was assuming, but merely stated that if Citizens has an obligation, UNSE was bound."²¹ This is wrong.

18 Response: These UNSE and Staff comments were before the Magruder Testimony of 22 March
19 2010 was filed with Exhibits MM-1 to MM-3, that documented the obligation of UNSE to "annually fund"
20 the student loans. This issue has not been presented by USNE in sworn testimony or cross-examined.

21
22 2. The ROO in ¶60 at 12:18-22 discussed a new "scholarship" program that was forced on the City of
23 Nogales, with threats that Magruder won't prevail and if you don't take this now, you will get nothing and
24 that 'a bird in the hand is better than no bird at all.' The previous City Manager was told the cost to litigate
25 in Superior Court would be some \$100,000 that the City could not afford; however, the "jurisdiction
26 clause" in Commission Order No. 61793 prohibits that approach and requires that this Agreement remain
27 under Commission jurisdiction.

28
29
30 ¹⁸ Also in Magruder Direct Testimony, Exhibit MM-1, Exhibit M- C from the Nogales Educational Foundation that managed the
31 awards from Citizens between 1999 and 2003 and Magruder Reply to The UNSE Motions, paragraph 3.3.4a, "Citizens
Implemented a Scholarship Program to benefit High School Seniors" at 33:12-34-1 for evidence counter to the USNE claim.

32 ¹⁹ As early as 8 2005, the funding for the student loan program has been questioned by this party. The Marshall Magruder
Testimony, 8 July 2005, Docket E-01032A-99-0401 at 132:13-17, states:

33 "A review of the scholarships sections in recent *Nogales International* newspapers has not listed any scholarships from
34 UniSource, UES or UNS Electric, Inc. This [Revised] Settlement Agreement, in Article 9, stated 'Each year, the program
will select ...' which is clear that this is an annual scholarship program. This has NOT been continued." [Emphasis in
original]" The first UNSE award of any kind was a \$1000 scholarship in 2008, three years later.

35 ²⁰ This is ROO footnote 23 at 12 that states: "Tr. of July 23, 2009 Procedural Conference at 20.

²¹ This is ROO footnote 24 at 12 that states: "*Id.* at 19."

1 The ROO in ¶61 continues at 13:1-2, "These are complex legal issues, which could lead to additional
2 litigation" is wrong. This Commission retains jurisdiction based on ¶10 in Order No. 61793, and expensive
3 litigation in court is not a reasonable assumption.

4 Response. Exhibit 3 of The UNSE Motions has been shown to be false and not true. This is from a
5 Memorandum between Citizens and UniSource Energy, Inc., of 11 August 2003, at the transfer of
6 ownership. Exhibit 3 is not a part of any Decision or Order approved by this Commission. Further, this
7 Exhibit, a Memo between two companies deleted obligations to comply with a Commission Order.
8 These companies cannot make modifications of a Commission Decision; only the Commission has that
9 authority. This issue has not been presented by UNSE in sworn testimony or cross-examined.

10
11 3. The ROO in ¶62 at 13:7-9 states that "The Commission did not approve the Revised Settlement
12 Agreement in Decision No. 61793" is blatantly not true. As previously stated above, the agreement was
13 included by reference and attached to the Decision, was specifically designated to remain under
14 continuous jurisdiction of the Commission, as utility ownership change was expected. The Agreement has
15 a supersession clause.

16 Response. This is another erroneous statement, made many times by USNE during the prior rate
17 case, during this case, and now repeated in a proposed ROO. This issue has not been presented by the
18 Company in sworn testimony or cross-examined.

19
20 4. The ROO in ¶60 at 12:18-22 and 13:14-16 discusses a new "scholarship" agreement between the
21 City of Nogales and UNSE as described above and is in the Magruder Response to The USNE Motions as
22 Exhibit MM-18. The Nogales City Council rejected in November 2009 a proposed agreement in Magruder
23 Direct Testimony, Exhibit MM-7 (Rev)²². The ROO in ¶63 states, "The new agreement between is a private
24 agreement between the parties... and does not require Commission approval."²³ This footnote further
25 states that the Commission would not need to approve such an agreement in July 2009, over a year before
26 the September 2010 agreement was made between the City and UNSE, again more erroneous statements.

27 Response. A Staff opinion, before an agreement had been reached, for the City and UNSE to
28 unilaterally change to a Commission Order is premature and erroneous. Only the Commission can change
29 a Decision or Order. This issue has not been presented by USNE in sworn testimony or cross-examined.

30
31 5. The ROO at 13:9-13 states that the "new agreement replaces that earlier agreement... and that the

32
33 ²² Magruder Direct Testimony [Exhibit MM-7 (rev) is in the Magruder Reply] discussed the November 2009 version that was
34 rejected, thus some of the features in the Magruder Direct Testimony are obsolete. The Magruder Reply to The UNSE Motions
35 in September 2010, includes MM-18, the new Agreement and is the current testimony on the new agreement.

²³ This is ROO footnote 25 at 13 that states: "Staff opined that the Commission could review a new agreement to ensure it does
not conflict with the public interest, but that the Commission would not need to approve such agreement. See Tr. of July 23,
2009 Procedural Conference at 21. [Underline emphasis added]"

1 public interests are not advanced by continuing to attempt to interpret UNSE's obligations under the
2 earlier, and now, superseded agreement." Magruder Exhibit M-18, this agreement, states

3
4 "This Agreement contains the entire and complete understanding between the Parties with
5 respect to the subject matter hereof and supersedes any prior agreements, representations,
6 provisions, understandings, or inducements between the Parties written or oral, including but
7 not limited to, the Educational Assistance (interest-free loan) Program identified in the Revised
8 Settlement Agreement between the City of Nogales and Citizens Utilities Company dated June 1,
9 1999, the Asset Purchase Agreement by and between Citizens Communications Company
10 ("Citizens") and UniSource Energy Corporation dated October 29, 2002,²⁴ and Memoranda of
11 Understanding by and between Citizens and UNS Electric dated August 11, 2003. Except as
12 expressly stated in this Agreement, each Party hereby irrevocably and conditionally waives any
13 and all rights and/or actual or potential claims against any other Party pertaining to any
14 scholarship or student loan program under the agreements set forth in the preceding sentence or
15 any other agreements and/or Arizona Corporation Commission decisions and hereby releases
16 every other Party from any present or future claims with respect to any such scholarship or
17 student loan program." [Magruder Direct Testimony, Exhibit MM-18 at 4-5, Emphasis added]

18 Response. This new agreement cannot unilaterally supersede a Settlement Agreement contained
19 without approval by the Commission. This Article is specified as compensation for damages, not as a
20 contribution or charity donation. The Commission has not approved this new agreement nor has the
21 Company requested a requested an A.R.S. §40-252 change to Commission Decision No. 61793.

22 This agreement is nice but has no direct bearing, until approved and Decision No. 61793 is changed.
23 This issue has not been presented by USNE in sworn testimony or cross-examined.

24 6. The ROO at 13:17-18 states "Given the new agreement between the City of Nogales and UNSE
25 consensually resolves this issue, we dismiss Mr. Magruder's Complaint with prejudice with respect to the
26 issue of UNSE's obligation to fund student loans."²⁵ As a customer injured by the power losses that
27 resulted the original City of Nogales complaint, this unilateral lowering of the compensation for damages
28 by this agreement for the "legalistic arguments" from USNE is not realistic. This agreement significantly
29 reduces the long-term benefits for the City of Nogales and Santa Cruz County by

- 30 (1) Forgoing \$112,000 to fund an entire 12-year generation of high school seniors in our county'
31 (2) Reducing the annual compensation 25%, from \$12,000 a year to only \$9,000 a year;
32 (3) Limiting the length of the program instead of expanding;
33 (4) Changing the emphasis from improving the workforce in Santa Cruz County; and by
34 (5) Allowing scholarships without conditions to "payback" in our local communities and to ratepayers.

35 ²⁴ The Asset Purchase Agreement is included in the UniSource Energy acquisition of Citizens case. The Complainant was a party.

²⁵ This is ROO footnote 26 at 13 that states: "We note, however, that Mr. Magruder's persistence in keeping this issue alive may have contributed to the enactment of a superior scholarship program to benefit of the citizens of Santa Cruz County."

1 Response. The recommendations in the ROO should be changed, as will be stated below. The
2 original Conclusions and Recommendations for this issue from the Magruder Direct Testimony at 29-30
3 remain this party's position and this has never been presented in sworn testimony or cross-examined.

4
5 7. The ROO in 12:18-22 does not determine if Mr. Magruder has standing but uses the new agreement
6 as rationale for not deciding this issue. A.R.S. §§ 40-246(A) and (B) appear to recognize this standing, as
7 one does not have to be directly injured to file a complaint. This entire section is in the footnote.²⁶ Further,
8 this section also uses the word "hearing" several times, which has not been allowed to proceed.

9 Response. The Company's Motion to Dismiss based on a lack of standing should be dismissed with
10 prejudice, as Mr. Magruder has standing and has not had his case heard.

11 **Conclusion.**

12 This Exception establishes some, but not all the erroneous facts, cited by UNSE and found in the ROO,
13 that have been misused, construed or are false, in this proceeding to date in order to deny Mr. Magruder
14 an opportunity to have his case heard. Mr. Magruder should be allowed to present his case, to cross
15 examine the Company and witnesses, as an American citizen he has these rights, and based on the statutes
16 in A.R.S. §§ 40-246(A) and (B).

17 The Procedural Schedule should resume. The Company should be ordered to file its Responsive
18 Testimony to the Magruder Direct Testimony before holding an Evidentiary Hearing.

19
20 **Recommendations:** The following changes recommended to the proposed ROO:

21
22 **Page 12, Line 18 to page 13, Line 6:**

23 DELETE Finding of Fact 61.
24

25
26 ²⁶ Arizona Revises Statutes (A.R.S.) § 40-246 states, "40-246. Complaint alleging violation by public service corporation of law or
rule or order of commission; exception; joinder of complaints; notice of hearing

27 A. Complaint may be made by the commission of its own motion, or by any person or association of persons by petition or
28 complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or
29 claimed to be in violation, of any provision of law or any order or rule of the commission, but no complaint shall be entertained
30 by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or
telephone corporation, unless it is signed by the mayor or a majority of the legislative body of the city or town within which
the alleged violation occurred, or by not less than twenty-five consumers or purchasers, or prospective consumers or
purchasers, of the service.

31 B. All matters upon which complaint may be founded may be joined in one hearing, and a complaint is not defective for
32 misjoinder or nonjoinder of parties or causes, either before the commission, or on review by the courts. The commission need
not dismiss a complaint because of the absence of direct damage to the complainant.

33 C. Upon filing the complaint, the commission shall set the time when and a place where a hearing will be had upon it and shall
34 serve notice thereof, with a copy of the complaint, upon the party complained of not less than ten days before the time set for
the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date. Service may
be made as a summons in a civil action is required to be served, or may be made in any manner giving actual notice, and no
irregularity in the service is an excuse or defense. " [Underlined for emphasis]

35 Also A.R.S. §40-247 provides the Hearing process for Complaints and states "the Complainant and the party complained of,
shall be heard in person or by an attorney, and may introduce evidence at the hearing."

1 REPLACE Finding of Fact 61 with

2 "61. As a citizen in Santa Cruz County, former County and City of Nogales Energy Commissioner,
3 ratepayer, and in accordance with A.R.S. §40-246(A) and §40-246(B), we find that Mr. Magruder
4 has standing on the issue involving student loans mandated by Decision No. 61793."

5 **Page 13, Lines 18 to 22:**

6 DELETE Finding of Fact 64.

7 REPLACE Finding of Fact 64 with

8 "64. We find that there will be merit in having an Evidentiary Hearing on this issue, and direct
9 the Hearing Division to resume the prior Procedural Schedule with the Company to submit its
10 Response Testimony before conducting an Evidentiary Hearing preferably in Santa Cruz County.
11 Further, to ensure misleading statements claimed to be in the record of this matter, a new
12 Hearing Officer, not familiar with the details of this case, should be assigned for this hearing."

13 **Page 16, Line 25 to page 17, Line 26:**

14 DELETE Conclusion of Law 5.

15 REPLACE Conclusion of Law 5 with

16 "5. As a citizen in Santa Cruz County, UNSE ratepayer, former Joint Santa Cruz County and City of
17 Nogales Energy Commissioner, and, in accordance with A.R.S. §40-246(A) and §40-246(B), we
18 find that Mr. Magruder has standing on the issue involving student loans mandated by Decision
19 No. 61793. We further find that an Evidentiary Hearing will be necessary to resolve the issues
20 involved with the failure of UNSE to fund student loans during 2003 to 2007, to underfund in
21 2008 to 2010, and then provided a new Agreement that did not conform with Decision No.
22 61793. This Hearing shall determine if a new agreement can be substituted as compensation for
23 damages found in the Revised Settlement Agreement included in Decision No. 61793. The
24 Hearing Division should appoint a new Hearing Officer."

25 **Page 17, Line 10:**

26 ADD new ordering paragraphs:

27 "IT IS FURTHER ORDERED THAT Mr. Magruder has standing on the issue involving student
28 loans mandated by Decision No. 61793.

29 "IT IS FURTHER ORDERED that an Evidentiary Hearing shall be necessary to resolve the issues
30 involved with the failure of UNSE to fund any student loans during 2003 to 2007, to underfund in
31 2008 to 2010, and then provide an Agreement that does not conform with Decision No. 61793.
32 This Hearing shall determine if a new agreement can be substituted for the Revised Settlement
33 Agreement in Decision No. 62793. The Hearing Division will appoint a new Hearing Officer."

34 Please make any conforming changes.
35

Magruder Exception 3

**DIRECT the Commission Staff to Report the Status of the
32 Distribution Reliability Projects
in the Plan of Action Required by Commission Decision No. 62011**

Background.

Commission Decision No. 61793 in paragraph 15 at 3:18-22 states "The Commission has requested Citizens to file its plan to address Santa Cruz County electric service issues in the Citizens Separation Dockets and by Procedural Order of April 29, 1999, Citizens was directed to file a final engineering plan regarding the Santa Cruz Electric Division, according to directives in Decision No. 61383 by June 11, 1999." These plans became a Plan of Action (POA), filed on 15 April 1999 and Supplemented on 7 May and 13 July 1999, complied with Decisions No. 61383 and 61793. Decision No. 61383 directed Citizens to file a Plan of Action "to rectify the service problems in the Santa Cruz Electric Division."²⁷

Commission Decision No. 62011 of 1 November 1999, included the Settlement Agreement between the Commission Staff and Citizens and approved the Citizens' **Plan of Action** to address service quality issues in the Santa Cruz service area.²⁸ This Decision states that the Commission Staff-Citizens Settlement Agreement "commits Citizens to a Plan of Action that is in compliance with Decisions No. 61383 and 61793 and incorporates Staff recommendations."²⁹ [Underline emphasis added]

There are several parts of this Plan of Action. Its Attachment IV "Citizens Utility Company Pole and Cable Replacements in Santa Cruz Electric Division" includes detailed schedules showing where these replacements will be made, the number of utility poles and amount of underground cable to be replaced, and the annual capital expenditures for the years 1999-2003.³⁰ This plan, in a Commission Staff-Citizens Agreement, was specifically approved in Commission Decision No. 62110.

In 2005, Decision No. 62011 was reopened. Extensive evidence presented showed the primary cause of the outages impacting Santa Cruz County customers were failures in the distribution subsystem when compared to failures in the transmission subsystem.³¹ Plan of Action Attachment IV addressed distribution reliability corrective actions, specifically replacement of known defective utility poles and underground cables, the primary components of a distribution subsystem. The completion company-designated 32 projects was presented during these 2005 hearings and completion of these projects questioned, as usual, without response by UNSE and Staff whose interests were focused on a second transmission line. The

²⁷ Commission Decision No. 62011, Finding of Fact 2, in Magruder Direct Testimony, Exhibit MM-10, at 5.

²⁸ "The Settlement Agreement between Commission Staff and Citizens Utilities Company" (hereafter the Commission Staff-Citizens Settlement Agreement) in ACC Docket No. E-01032A-00-0401. This docket was initially closed when Decision No. 62011 was implemented. Decision No. 62011 was reopened in 2004 to assess reliability issues in Santa Cruz County.

²⁹ Commission Decision No. 62011, Finding of Fact 15, in Magruder Direct Testimony, Exhibit MM-10 at 5.

³⁰ "Citizens Plan of Action Supplement, Attachment IV Citizens Utility Company Pole and Cable Replacements Santa Cruz Electric Division, 1999-2003" in the Magruder Direct Testimony, Exhibit MM-1, Exhibit M-D.

³¹ ACC Docket E-01032A-99-0401, "Direct Testimony of Marshall Magruder" of 8 July 2005, Appendices C and D.

Staff attorney who argued against resolving the status of the 32 projects is the USNE attorney in this case.

Citizens was very clear when designating these 32 projects as necessary because of overage poles required replacement and that underground cables with low reliability were used and improperly laid underground without the proper non-conducting soil above and below each cable. As these utility poles and underground cables were known to be defective and had low reliability in 1999, when the Plan of Action was created by the Company and approved in the Staff-Citizens Settlement Agreement, completion of these projects with a budget over \$6 million was necessary to meet the improvement, promised and compliance expected by Commission Decision No. 62011 and others that followed.

The ROO in ¶44 at 8:18-25 was clear when it stated

"44. Comparing UNSE's Response to Mr. Magruder's Concerns with the schedules of replacement projects in the Supplement to the POA shows that Citizens did not replace the number of poles or amount of underground cable identified in Attachment IV to the POA. The May 27, 1999, Supplement to the POA appears to identify 3080 poles to be replaced during the period 1999 to 2003 at an estimated cost of \$4,320,000, and a total of 159,388 of cable at an estimated cost of \$6,410,520 over the same period. UNSE provided records from Citizens that showed that Citizens replaced 1,145 poles at a cost of \$1,780,420, and in 1999 and 2000 spent \$1,780,420 on replacing underground cable.³²" [Underline emphasis added]

The ROO in ¶45 at 9:1-4 continues with "UNSE believes that Citizens completed the projects in 2000³³" in its response to Mr. Magruder's Concerns.

The ROO in ¶46 at 9:5-9 further states

"46. Mr. Magruder states that while he believes that compliance issues remain, he is not pursuing his claim that USNE and Citizens did not replace the poles and cables as he alleges was required by the POA approved in Decision NO. 60211.³⁴ Mr. Magruder recommends that Staff and the Residential Utility Consumer Office review his testimony and verify that UNSE has complied with the POA.³⁵" [Underline emphasis added]

Mr. Magruder continues with this recommendation, no matter what happens with this Complaint, his only complaint concerning the replacement of defective poles and cables.

Some of the Problems with the Proposed ROO and Responses:

The proposed ROO does not direct the Staff or RUCO to verify the status of each of these 32 projects and follow up actions are not in the ORDER part of the ROO. RUCO was a party and addressed in several of the earlier Commission Orders as an agency that could conduct such verifications.

³² This is ROO footnote 11 at 8 that states: "It is unclear from the exhibit whether all of the 159,388 of cable were replaced, but it seems unlikely that Citizens would have completed all of the cable replacements projects in 1999 and 2000, when the original POA was a five year plan." [Underline emphasis added]

³³ This is ROO footnote 12 at 9 that states: "UNSE Response to Mr. Magruder's Concerns at 2."

³⁴ This is ROO footnote 13 at 9 that states: "Magruder Reply to Motion to Dismiss at 11. Mr. Magruder later clarified that he does not want the Complaint dismissed with respect to this issue, but wants Staff to follow up to ensure the Order is complied with." See Tr. of October 6, 2010, Oral Argument at 52." [Underline emphasis added]

³⁵ This is ROO footnote 14 at 9 that states: "Magruder Reply to Motion to Dismiss at 13."

1 **Conclusion:**

2 The ROO should direct the Staff or RUCO to verify the completion status of each of these 32 projects
3 and include follow up actions already in the ROO.

4
5 **Recommendations:** The following changes are recommended to the proposed ROO:

6 **Page 10, Lines 15 to 18:**

7 DELETE Finding of Fact 51.

8 REPLACE Finding of Fact 51 with:

9 "51. We do not find requiring UNSE to replace every pole or underground cable implicated in
10 Citizens' 1999 POA to be reasonable or in the public interest; however, the status of each of these
11 32 project areas and subdivisions needs to be reviewed by the Commission Staff to verify that
12 known unreliable utility poles and cables are not contributing to distribution reliability
13 problems. We feel that the Staff should work with the Company to verify that each of these
14 projects, as detailed in the Magruder Direct Testimony in Exhibit MM-12, are not areas with low
15 distribution trends, based on the standard reliability indices used by UNSE and the Commission.
16 Further, the Franchise Agreement with UNSE and the City of Nogales requires an annual "outage
17 map" to be submitted to the City. This outage map should show areas of low reliability. This
18 review should include a technical report to the Director of the Utilities Division with a copy to
19 Mr. Magruder and to the City of Nogales Director of Utilities within six months of this Decision. A
20 copy of the latest "outage map" should be in the report. Upon receipt of a letter in this Docket
21 from the Director of the Utilities Division that the issues herein have been resolved, we will
22 consider this complaint to be dismissed, with prejudice."

23 **Page 16, Lines 22 to 24:**

24 DELETE Conclusions of Law paragraph 4.

25 REPLACE with a new Conclusions of Law paragraph 4 with:

26 "As discussed herein, it is in the public interest to dismiss the Complaint with prejudice with
27 respect to the issue of the status of the replacement of defective utility poles and underground
28 cable detailed in the 1999 Citizens Plan of Action upon receipt of the letter in Findings of Fact 51
29 and 53.

30 **Page 17, Lines 8 to 9:**

31 DELETE the present ordering paragraph.

32 REPLACE with a new ordering paragraph:

33 "IT IS FURTHER ORDERED that UNSE shall provide a copy of the pole and cable replacement
34 implementation process and plan in the Santa Cruz Service area to the Director of the Utilities
35 Division with a copy to Mr. Magruder within 90 days of the effective date of this order, according
to the Findings of Fact 51 and 53.

Please make any conforming changes.

Magruder Exception 4

REQUIRE UNS Electric to Establish a Program so Customers on Life Support Equipment Can Apply to be Notified during an Electrical Outage

Background.³⁶

During the 2005 "reliability in Santa Cruz County" hearings, the Chairman of the Corporation Commission Gleeson asked Mr. Magruder *what will happen to those on life support if there is an electrical outage?* At that time, he was unable to provide a solution; but in the prior rate case, this issue raised this issue and he offered an answer that appears inexpensive, effective and easy to implement.

The Company did develop a restrictive program to provide only for customers on life support equipment who have applied for and have been approved by USNE the CARES-Medical (CARES-M) rate tariff to be eligible for notification during an electrical outage.

This UNSE program was not implemented. "UNSE does not notify life support customers of outages."³⁷

The Company is responsible for the safety of all its electricity customers and cannot routinely terminate services for any CARES-M customer. The CARES-M program requires periodic customer updates that require a physician's signature, as to their status, on their CARES-M tariff applications.

Other non-CARES-M ratepayers are on life support equipment. Most critical life support equipment has a battery backup capability or is non-life-threatening when power is lost, some for very short periods of time. Some customers have critical life support equipment that may cause harm if a power outage exceeds a known period of time. This critical human safety concern about power outages is frequently expressed in many cases and in public comments before this Commission.

Mr. Magruder recommended that a system be developed so that any customer on life support CAN APPLY to be notified of an outage within the period of time before personal harm may occur. The CARES-M tariff is limited only available for lower income ratepayers who have applied for these low-income rates.

The Company vigorously opposes inclusion of any customer on life support, other than the CARES-M tariff customers because

- (a) Of concerns about sharing customer information with law enforcement agencies,
- (b) It does not know where its customers are located, and
- (c) It does not know what kinds of life support equipment its customers use.³⁸

³⁶ This section is generally without footnotes as it is fully documented in the Magruder Testimony and the ROO.

³⁷ Magruder Direct Testimony, Exhibit M-13, is a copy of the UNSE filing "UNS Electric, Inc.'s Compliance Filing Regarding Procedures for Outage Notification for Life Support Customers (Decision N. 70360)", at 2:9.

³⁸ ACC Docket E-04204A-06-0783, UNSE Post-Hearing Brief of 17 November 2007 at 34:16-35-2, "that Mr. Magruder has asserted that for customers who utilize life-support equipment in their homes, the Company should be responsible for providing the names and addresses of those customers to emergency response agencies." This is a very misleading statement.

UNSE is the only source of a power outage, concern. The Arizona Administrative Code (A.A.C.), concern (a), specifically authorizes the third-party information sharing with law enforcement agencies. The Company knows the physical location of all its meters, concern (b). UNSE requires all CARES-M customers to provide a statement of their life support condition with a physician's signature, concern (c). The Company is the best source of outage information and it knows the exact locations of each customer's meters. The A.A.C. permits utilities to its share customer information with law enforcement.

The County Sheriff is responsible for overall coordination of public safety issues in the county and its cities and towns. The Santa Cruz County Sheriff has agreed to use the County's 911 Call and Dispatch Center as a notification system so that the appropriate First Responders can notify those who may be harmed on life support equipment during an electrical outage.

A customer application form or web page could be developed to periodically update this additional information from UNSE's customers on life support equipment. A list of impacted customers could be developed, based on the customer's physical address, so a pre-planned response list is provided to the County 911-Call Center. Depending on an outage location, UNSE would only need to inform the Sheriff of those on the list in an outage area. The 911-Call Center dispatcher determines the appropriate First Responder organization to call or physically check that person on life support of the outage.

The Santa Cruz County Sheriff is eager to establish and implement such a program; however, in order to ensure both UNSE and his department have clear procedures, he would want a Memorandum of Understanding (MOU) or equivalent. "As Mr. Pignatelli (UniSource Energy and UNSE CEO) stated during the hearing, UNS Electric is happy to work with the appropriate agencies on this very important issue."³⁹

No such system exists at this time. Mr. Magruder has offered to work with the Company to help design a new application for customers on Life Support Equipment. The vigorous UNSE opposition is disturbing.

Some of the Problems with the Proposed ROO and Responses:

The proposed ROO contains some additional erroneous statements.

1. The ROO in ¶65 at 13:21-24 states that in the UNSE 2007 rate case

"Mr. Magruder proposed that UNSE be required to identify all customers that have life support equipment, its type and battery capabilities, and prove that information from law enforcement so that local authorities can check on such customers during power outages." [Emphasis added]

This is not true. This erroneous statement is also repeated in The UNSE Motion at 3:9-11. This is another quote from a USNE filing in the rate case that ended up in the Commission Decision No. 70360.⁴⁰ The wording has a very negative connotation in Santa Cruz County about reporting to law enforcement.

³⁹ ACC Docket E-04204A-06-0783. UNSE Post-Hearing Brief, 17 November 2007, at 34:25-35:2.

⁴⁰ Commission Decision No. 70360 at 58:24-59:2. This ALJ also reworded untrue statements from the UNSE Post-Hearing Brief, 17 November 2007, "that Mr. Magruder has asserted that for customers who utilize life-support equipment in their homes, the Company should be responsible for providing the names and addresses of those customers to emergency response agencies."

1 The ROO in ¶71 at 15:2-3 states, "Mr. Magruder believes that his proposal to notify local authorities of
2 all customers on life support (not only the low income customers) should be adopted" is misleading. Only
3 those customers who have applied to be notified would be in the notification program.

4 Response. The Complainant has never requested that "ALL" customers on life support be identified but
5 that all customers on life support should have an opportunity to apply to be notified during an electrical
6 outage. At present, only those in the CARES-M can apply; however, since the UNSE program is not
7 implemented, even this is mute. These life support customers, in the notification program, should be any
8 customers who have applied or requested to be notified. This "request" needs to ensure the concerns
9 raised in ROO in ¶71 at 15:3-11 are explained to eliminate any liability risk to the Company, Commission
10 or County Sheriff. This is the reason why the Sheriff wants a signed MOU before starting, as the legalities
11 concerning risk of not notification need to be properly explained and agreed for persons who apply to be
12 notified. The concerns in the ROO should be resolved in drafting of an Application, to include where the
13 customer physically lives, the specific life support equipment, and how an outage would impact that
14 customer. This should not be difficult for a qualified attorney to accomplish in a few hours.

15 The technical concerns are not challenging, as electricity flows from generation to customers and an
16 outage at one point means all those farther down the line will not have electricity. The company will
17 determine where the outage occurs, thus all customers farther away from the generator source, who have
18 applied to be notified, should be notified.

19 Response. These concerns in the ROO are all easily resolved and should be accomplished before
20 commencing this customer safety program.

21
22 2. The ROO in ¶69 at 14:20-22 states the Commission Staff believed that Mr. Magruder's position
23 was not adopted in Decision No. 70360" and that it would require an A.R.S. §40-242 modification. The
24 Decision ordered the Company file a statement "regarding suggested changes to its procedures that may
25 address the concerns raised by Mr. Magruder." ⁴¹ [Underlined for emphasis] The Staff belief is in error, as
26 the "position" would be a notification process. Throughout the rate case and these hearings, Mr. Magruder
27 repeatedly stated he does not propose "the" process but that any process the company selects is fine with
28 him, but only if "all those on life support can apply" to be notified.

29 Response. The Magruder "concern" is that only those with CARES-M rates could apply for this
30 program and that "any customer" on life support is not allowed to apply to be notified. Customer income
31 should not be a requirement to apply for this notification. Since a minor stroke last year, this issue has
32 taken on a much more critical and personal point of view.

33
34
35

41 Commission Decision No. 70360 at 88:9-11.

3. The ROO in ¶71 at 15:11-18 discusses the concept and recommend additional study by the company prior to being adopted. And ends with that "the limited experience with the CARSE-M customers may serve as a pilot program to determine the value of the program." Unfortunately there has been no program, other than two letters (with rather threatening wording) to these few low-income customers.

Response. A program to serve Santa Cruz service area customers would be an excellent pilot program and would eliminate a serious bias found by the 75% eligible, but have not applied, for CARES tariffs.

It should is noted that informing the Santa Cruz County 911 Call Center when there is an electric outage will significantly benefit the law enforcement capabilities in this county as additional mobile units could be assigned in the "dark areas" because of security and illegal smuggling concerns.

Conclusion:

The ROO should be correct and the Company directed to implement a program to allow its customers on life support to apply to be notified during an electrical outage. The Magruder Response to The UNSE Motions at 13:14-19 quotes from the Magruder Direct Testimony in Exhibit MM-13 remain valid that states

"The recommendations in Exhibit MM-13 remain which states:

"1. That UNSE design and provide annually a new life-support customer application for all customers including an "opt out" provision and information release statement to law enforcement [for First Responders], at least once a year, in customer billing statements and on the company website.

"2. That UNSE enter into a mutual support agreement with the County Sheriff to provide notifications of life support customers.

"3. That any resultant County-UNSE mutual support agreement(s) is implemented.

"That UNSE notify all parties in this case as 1, 2 and 3 are accomplished."

[Exhibit MM-13, p. 6, emphasis in original.] [Magruder Testimony 39:22-40:3]"

Recommendations: It is recommended that the proposed ROO be changed as follows:

Page 13, Line 21:

DELETE Finding of Fact 65.

REPLACE Finding of Fact 65 with:

"65. In the UNSE's 2007 rate case, Mr. Magruder proposed that UNSE establish a program to notify its customers on life support during an electric outage. Any customer who requires life support equipment could apply to be notified and when applying the specific customer's physical locations, the type of life support equipment and the backup capabilities of this equipment can be obtained. The purpose of this program is to provide information to the Santa Cruz County 911 Call Center, so they could contact these customers, as the situation dictates, during power outages.

"In 2005, the Commission Chairman Gleason asked Mr. Magruder what happens to those on life support during an electrical outage? The UNSE rate case was used by its Intervenor Magruder to positively respond to the Chairman's question."

Page 14, Line 20 and 21:

DELETE Finding of Fact 69.

REPLACE Finding of Fact 69 with:

"69. The Santa Cruz County Sheriff wants to support this process, as knowledge of electrical outages is always important information for law enforcement and to enhance the safety of those on life support equipment. In order to implement such a program, the procedures for both UNSE and the Sheriff's Department must be very clear so that during an emergency, the steps can be followed as planned. This program would also involve potential liability risk for both parties, thus, a mutual support agreement or memorandum of understanding will be necessary to protect the liability risks of both parties and to operate the program as planned."

Page 15, Lines 13 to 18:

DELETE sentence starting with "Mr. Magruder" to the end of the paragraph.

REPLACE with:

"The above concerns need to be resolved by drafting an Application for Life Support Customers to be Notified during an Electrical Outage or similar title, to reduce program risk to an insignificant level. A copy of this Application shall be filed in this docket. Any UNSE customer in Santa Cruz County on life support shall be able to apply. Paper applications, distributed in annual mailings, and online applications should be available. Mr. Magruder used the 2007 rate case to implement in Santa Cruz County a prototype project so that experience could lead to the understanding necessary for rulemaking for a larger population, at the state or national level. The Commission did not adopt his "proposal" however, he never limited it his proposed process. It was one way he considered to resolve Chairman Gleason's question. UNSE can accomplish this however is best for the Company and in the public good. The recommendations from Mr. Magruder are that UNSE

- (1) UNSE design and provide annually a new-life support customer application to all customers (similar to the present CARES mailing), including an 'opt out' provision and an information release statement to the Santa Cruz County 911-Call Center, in customer billing statements and posted on the company's website;
- (2) UNSE enter into a mutual support agreement with the County Sheriff to provide notifications to those customers on life support provided by UNSE; and
- (3) Any resultant County-UNSE mutual support agreement(s) to be implemented;
- (4) That UNSE notify the Director of Utilities and Mr. Magruder when 1, 2, and 3 are accomplished."

Page 15, Lines 19 to 21:

DELETE Finding of Fact 72.

REPLACE Finding of Fact 72 with:

"Upon completion of the establishment of a notification program in Santa Cruz County where any customer on life support can apply to be notified during an electrical outage, as certified by the Director of Utilities, this Complaint will be dismissed with prejudice."

1 **Page 17, Line 10:**

2 INSERT new ordering paragraph:

3 "IT IS FURTHER ORDERED that

- 4 (1) UNSE design and provide a life support customer application to all its customers (similar to
5 a CARES application), including an 'opt out' provision and an information release statement
6 for the Santa Cruz County 911-Call Center, at least annually, in customer billing statements.
7 It will also be posted on the company website;
8 (2) UNSE shall enter into a mutual support agreement with the County Sheriff to provide
9 notifications to those customers on life support on a list provided by UNSE; and
10 (3) Any resultant County-UNSE mutual support agreement(s) shall be implemented, with a
11 copy filed in this docket;
12 (4) That UNSE notify the Director of Utilities and Mr. Magruder when 1, 2, and 3 above are
13 accomplished.

14 These actions shall be completed within twelve months after this Decision is approved."

15 "And upon certification by the Director of Utilities that UNSE has implemented an outage
16 notification program for its customers on life-support, this Complaint shall be dismissed with
17 prejudice."

18 Please make any conforming changes.
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1 **Annex A**

2 **List of the**
3 **Magruder Direct Testimony and Magruder Reply**
4 **Exhibits MM-1 to MM-18**

5
6 The Magruder Direct Testimony of 22 March 2010 contains the Magruder Exhibits:

7	Exhibit MM-1	Magruder Late Filed Exhibits, 24 December 2007
8	Exhibit M-A	ACC Decision No. 61793 of 29 June 1999
9	Exhibit M-B	Correspondence with Nogales Educational Foundation
10	Exhibit M-C	UNS Electric Data Request Responses ..
11	Exhibit M-D	Citizens Plan of Action (excerpt), Attachment IV
12	Exhibit M-E	Citizens Plan of Action (status in 1999)
13	Exhibit MM-2	Letter from Deputy City of Nogales Attorney to Citizens of 28 June 2008
14	Exhibit MM-3	Letter from Citizens Counsel to City of Nogales of 31 July 2008
15	Exhibit MM-4	UNS Electric filing "Status Update" of 13 Jan. 2009
16	Exhibit MM-5	Reliability Improvements Agreed to by Citizens in 1999 and Subsequent Compliance
17	Exhibit MM-6	UNS Electric filing "Compliance Filing Regarding Citizens Utilities Educational Assistance Program" of 25 August 2008
18	Exhibit MM-7	UNS Electric New College Scholarship Program (TBD, as MM-7 (Rev) below)
19	Exhibit MM-8	In Remembrance of Our Friend Jose B. Cañez, <i>Nogales International</i> , 5 January 1999
20	Exhibit MM-9	Marshall Magruder Status Report, 23 July 2009
21	Exhibit MM-10	Commission Opinion and Decision No. 62011, 2 November 1999
22	Exhibit MM-11	UNS Electric Response to Mr. Magruder's Concerns, 28 July 2008
23	Exhibit MM-12	Marshall Magruder Rebuttal to UNSE Response to Mr. Magruder's Concerns, 13 Sept. 2008
24	Exhibit MM-13	UNS Electric Compliance Filing Regarding Procedures for Outage Notification for Life-Support Customers, 25 August 2008
25	Exhibit MM-14	Marshall Magruder Rebuttal of UNSE Compliance Filing Regarding Procedures for Outage Notification for Life Support Customers, 24 September 2008

26 The Magruder Reply to the UNSE Motions to Dismiss with Prejudice and to Stay the Procedural Schedule,
27 of 7 September 2010, contains additional Magruder Exhibits:

28	Exhibit MM-7 (Rev)	UNS Electric New College Scholarship Program
29	Exhibit MM-15	Application for an UNS Electric Scholarship Loan (November 2009)
30	Exhibit MM-16	UNS Scholarship Loan Award Agreement
31	Exhibit MM-17	Response to a Procedural Order and a Motion that One Issue Remain Open of 21 December 2009
32	Exhibit MM-18	UNS Electric Scholarship Agreement (1 September 2010)